

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**BRIAN LEGGE,**

**Plaintiff,**

**Case No. 3:09-cv-093**

**vs.**

**Judge Thomas M. Rose**

**MICHAEL J. ASTRUE,  
Commissioner of Social Security,**

**Magistrate Judge Sharon L. Ovington**

**Defendant.**

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**ENTRY AND ORDER OVERRULING LEGGE’S OBJECTION (Doc. #17)  
TO THE MAGISTRATE JUDGE’S REPORT AND  
RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE’S  
REPORT AND RECOMMENDATIONS (Doc. #16) IN ITS ENTIRETY;  
VACATING THE COMMISSIONER’S DECISION THAT LEGGE WAS  
NOT DISABLED, REMANDING THIS MATTER TO THE  
COMMISSIONER FOR FURTHER CONSIDERATION CONSISTENT  
WITH THIS ENTRY AND ORDER AND THE REPORT AND  
RECOMMENDATIONS AND TERMINATING THIS CASE**

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Plaintiff Brian Legge has brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Defendant Commissioner of Social Security (the “Commissioner”) denying his applications for Supplemental Security Income (“SSI”) and Child Disability Benefits (“CDB”). On July 6, 2010, United States Magistrate Judge Sharon L. Ovington entered a Report and Recommendations (doc. #16) recommending that the Commissioner’s non-disability decision regarding Legge be vacated and that this matter be remanded to the Commissioner for further consideration consistent with the Report and Recommendations.

Legge then filed an Objection. (Doc. #17.) The time has run and the Commissioner has not responded to Legge's Objection. This matter is, therefore, ripe for decision.

Based upon the reasoning and citations of authority set forth in the Magistrate Judge's Report and Recommendations (doc. #16) and in Legge's Objection (doc. #17), as well as upon a thorough de novo review of this Court's file, including the Administrative Transcript, and a thorough review of the applicable law, this Court adopts the aforesaid Report and Recommendations in its entirety. In so doing, the Court vacates the Commissioner's decision that Legge was not disabled and remands this matter to the Commissioner for further consideration consistent with this Entry and Order and the Magistrate Judge's Report and Recommendations. Finally, Legge's Objection to the Magistrate Judge's Report and Recommendations is overruled.

This Court's function is to determine whether the record as a whole contains substantial evidence to support the Administrative Law Judge's ("ALJ's") decision. *Bowen v. Commissioner of Social Security*, 478 F.3d 742, 745-46 (6th Cir. 2007). This court must also determine whether the ALJ applied the correct legal criteria. *Id.*

Regarding the substantial evidence requirement, the ALJ's findings must be affirmed if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citing *Consolidated Edison Company v. NLRB*, 305 U.S. 197, 229 (1938)); *Landsaw v. Secretary of Health and Human Services*, 803 F.2d 211, 213 (6th Cir. 1986). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson, supra*, at 401; *Ellis v. Schweicker*, 739 F.2d 245, 248 (6th Cir. 1984). Substantial evidence is

more than a mere scintilla, but only so much as would be required to prevent a directed verdict (now judgment as a matter of law) against the ALJ/Commissioner if this case were being tried to a jury. *Foster v. Bowen*, 853 F.2d 483, 486 (6th Cir. 1988); *NLRB v. Columbian Enameling and Stamping Company*, 306 U.S. 292, 300 (1939).

The second judicial inquiry - reviewing the ALJ's legal criteria - may result in reversal even if the record contains substantial evidence supporting the ALJ's factual findings. *See Bowen*, 478 F.3d at 746. A reversal based on the ALJ's legal criteria may occur, for example, when the ALJ has failed to follow the Commissioner's own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right. *Bowen*, 478 F.3d at 746(citing in part *Wilson v. Commissioner of Social Security*, 378 F.3d 541, 546-47 (6th Cir. 2004)).

In this case, the ALJ's decision is not supported by substantial evidence. Legge does not object to the finding that the ALJ's decision is not supported by substantial evidence but argues that he should be granted benefits by this Court. The Report and Recommendations recommends that, instead of granting benefits, this matter be remanded for further consideration.

WHEREFORE, based upon the aforesaid, Legge's Objection to the Magistrate Judge's Report and Recommendations (doc. #17) is OVERRULED. This Court adopts the Report and Recommendations of the United States Magistrate Judge (doc. #16) in its entirety. The Commissioner's decision that Legge was not disabled is VACATED and this matter is remanded to the Commissioner for further consideration consistent with this Entry and Order and the Magistrate Judge's Report and Recommendations.

The captioned cause is hereby ordered terminated upon the docket records of

the United States District Court for the Southern District of Ohio, Western Division,  
at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio, this Sixteenth Day of August, 2010.

s/Thomas M. Rose

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JUDGE THOMAS M. ROSE  
UNITED STATES DISTRICT COURT

Copies furnished to: Counsel of Record